From: J. C. Allen
To: Microsoft ATR
Date: 1/25/02 11:28pm
Subject: Microsoft Settlement

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To: Renata B. Hesse
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601 D Street NW
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Subject: Microsoft Settlement

To Judge Kollar-Kotelly and whom it may concern,

My name is J. C. Allen. I reside in Hampton, Virginia. I am a citizen by birth of the United States.

It should not be necessary to relate this information via email. However, Microsoft Corporation ("Microsoft") has, in the past, falsified support for its position as market leader and its monopolistic, predatory practices. It is imperative that the U. S. Department of Justice (USDOJ) carefully scrutinize the responses it receives regarding the antitrust complaint filed against Microsoft and the proposed Final Judgment, because of these past actions on the part of Microsoft. Some of the email the USDOJ receives may in fact have been manufactured by Microsoft to intentionally deceive the USDOJ. Microsoft has resorted to such impromptu "lobbying" in the past in order to create the perception that the public supports Microsoft's actions in the nation's marketplace. I have no desire to read, in a few months, about a similar deception with regard to the proposed Final Judgment ("Proposed Final Judgment"). It is my opinion that Microsoft will use every tactic possible to convince the USDOJ that the public believes the Proposed Final Judgment is fair. I am the public, and I do not believe it is fair. I can assure you that I am not alone.

The following URL details the efforts of Microsoft to influence Utah Attorney General Mark Shurtleff using these tactics:

http://seattletimes.nwsource.com/html/nationworld/134332634_microlob23.html

A portion of the above article (which was originally published by the Los Angeles Times) is quoted below:

"Letters purportedly written by at least two dead people landed on the desk of Utah Attorney General Mark Shurtleff earlier this year, imploring him to go easy on Microsoft for its conduct as a monopoly.

The pleas, along with more than 100 others from Utah residents, are part of a carefully orchestrated nationwide campaign by the software giant... Microsoft sought to create the impression of a surging grass-roots movement, aimed largely at the attorneys general of some of the 18 states that have joined the Justice Department in suing Microsoft.

The Microsoft campaign goes to great lengths to create an impression that the letters are spontaneous expressions from ordinary people. Letters sent in the last month are on personalized stationery using different wording, color and typefaces, details that distinguish Microsoft's efforts from lobbying tactics that go on in politics every day."

I would like to begin with a quote by former Judge, Stanley Sporkin:

"Simply telling a defendant to go forth and sin no more does little or nothing to address the unfair advantage it has already gained..."

I would also like to list some of those companies that have

unfairly suffered because of Microsoft's illegal monopoly and predatory marketing practices. Following the company name and separated by a colon is the name of the product that Microsoft intentionally sabotaged, copied, or stolen outright. Following the product name and separated from the competing company's name by a semicolon is the name of the product Microsoft developed to integrate the functions of these competing applications into Microsoft operating systems. Note that many of these competing applications are no longer being actively developed because these companies, which depended on revenues from sales, are no longer in business. A few others continue to market new releases, but their user base has dramatically declined:

1. Digital Research, Inc. (then Novell, now Caldera): DR DOS; MS-DOS 5.0 and Windows 3.1, which were intentionally designed by Microsoft to alter the base upon which applications were written for Microsoft operating systems, so that applications written for Microsoft operating systems would be incompatible with DR DOS. The announcement that Windows 3.1 would not be compatible with DR DOS resulted in sales of that product dwindling to practically nothing in months.

2. Real Networks: Real Player; Microsoft Windows Media Player, which has almost completely supplanted Real Player as the de facto internet standard streaming media application. Windows Media Player is bundled with Microsoft operating systems, and is available as a free download for Microsoft operating system users.

3. Netscape Corp. (now America Online/Time Warner): Netscape Navigator; Internet Explorer, which has effectively supplanted Netscape Navigator as the browser of choice among most internet users. In 1995 the vast majority of internet users used Netscape Navigator to access the internet. Internet Explorer is bundled with Microsoft operating systems.

4. Apple Computers: Apple's Graphical User Interface ("GUI"); although Apple borrowed heavily from XWindows for UNIX, Microsoft's first attempt to produce a true GUI operating system featured an almost exact replica of Apple's desktop, right down to the trash can, which Microsoft renamed "Recycle Bin". Apple's GUI became the basis for the present look and feel of Microsoft operating systems.

5. Corel: WordPerfect; Microsoft Office (Microsoft Word). Also: Quattro Pro; Microsoft Office (Microsoft Excel). Both Microsoft Office and Microsoft Word, separately, are frequently bundled with new installations of Microsoft operating systems.

6. Quarterdeck Corp. (now owned by Symantec): QEMM; EMM386.*, a memory manager that enabled DOS-based programs to access more than 640K of memory. EMM386.* (et al.) are necessary components of Microsoft operating systems that run in real and protected mode.

7. STAC Electronics: hard drive compression scheme; Microsoft DoubleSpace. DoubleSpace is a disk utility that is included with Microsoft operating systems.

8. Go Corp.: pen-based computing; Microsoft incorporated the code into its operating systems so that they would be able to recognize the device.

9. IBM: Lotus 1-2-3; Microsoft Office (Microsoft Excel). Also: OS/2; Windows 95. Microsoft refused to provide technical details necessary for third-party developers to develop applications for both Windows 95 and OS/2 to IBM, resulting in a net migration of users away from that operating system as the number of available applications fell. Microsoft Office is frequently bundled with new installations of Microsoft operating systems.

10. Sun Corp.: Java, Sun Java Virtual Machine ("JVM"); Microsoft J++, J#, C#, ".NET". Microsoft's non-standard implementation of Java (J++, J#) forced Sun to sue to prevent Microsoft from designing proprietary

extensions to the language that were only functional on Microsoft operating systems. Microsoft lost and in retribution announced it would no longer support Sun's JVM in order to force a migration away from the use of Java and to force implementation of Microsoft's ".NET" initiative.

In addition, Microsoft has incorporated new features into its newest operating system to further extend its monopoly and sabotage applications in markets which it intends to dominate, for example: Roxio EasyCD Creator (Microsoft bundled the software required to "burn" CDs into its newest operating system, Windows XP); Adobe Photoshop, et al. (Microsoft PictureIt! is marketed to directly compete with these applications, using a proprietary file format which non-Microsoft middleware cannot support because PictureIt!, by default, stores images in the proprietary file format, and Microsoft has not released details of the file format to third-party developers); Norton Personal Firewall, et al. (Microsoft bundled a limited firewall into Windows XP).

In short, Microsoft has demonstrated time and time again that it is not an innovator, but that it is a ruthless integrator - buying, copying or stealing other companies' innovations and intellectual property outright, and bundling applications which utilize these innovations with its operating system in order to drive its competitors out of business. Fear of the pending Final Judgment has not caused Microsoft to cease this abusive practice. In fact, the newest components of Microsoft Windows XP (e.g., CD burning software) were developed well after the anti-trust action against Microsoft was initiated.

It is my contention that the Proposed Final Judgment will not "provide a prompt, certain and effective remedy for consumers by imposing injunctive relief to halt continuance and prevent recurrence of the violations of the Sherman Act by Microsoft that were upheld by the Court of Appeals and restore competitive conditions to the market." I believe that the Proposed Final Judgment does "little or nothing to address the unfair advantage [Microsoft] has already gained".

I have no special skills or training which qualify me to comment in detail on the Proposed Final Judgment against Microsoft. I am neither a lawyer, nor an employee of any of the companies which directly compete with, or depend on, Microsoft software. However, I use Microsoft software daily in my work and at home, and it is my belief that the opinions of those who actually use Microsoft products in their daily lives should weigh heavily in any deliberation. We are, after all, the ones who stand to gain or lose the most by any Final Judgment, and we stand to lose a great deal if the Proposed Final Judgment is adopted.

My objections to the settlement offered by the United States Federal Government are as follows:

1. A. The internet was developed using open, non-proprietary standards. B. Microsoft has extended, and is extending, its monopoly by developing proprietary standards which unfairly exclude rivals from developing applications which are fully functional on computers running Microsoft operating systems. C. Microsoft will profit from this exclusion. D. Microsoft should not be allowed to profit in the future from unfairly excluding competitors in the past.

Repeatedly, the court has stated that Microsoft integrated its Web browser into Windows in a non-removable way. However, at the time this claim was made, very early in the anti-trust action against Microsoft, it was a deception. It is possible to remove Internet Explorer ("IE") from Windows 98. This has been demonstrably proven:

http://www.cnn.com/TECH/computing/9903/09/removeie.idg/

In fact, an application was developed to remove IE from Windows 98 called "98lite":

http://www.98lite.net/

I am not ignorant of the fact that this would eliminate some of the features offered by the integration of Windows 98 and Internet Explorer. However, it would eliminate many of the vulnerabilities which have plagued Microsoft software from the time Microsoft incorporated IE as a component of the Windows operating system and offer enhanced security to the user. Yet requiring Microsoft to enable the end user of Windows to completely remove IE, and therefore eliminate direct access to the operating system (which IE, as a component of the operating system, was designed to allow), is not a condition of the Proposed Final Settlement.

At the time the integration of IE into Windows 98 was first undertaken by Microsoft, the anti-trust action against Microsoft had not yet begun. However, shortly thereafter Microsoft desperately needed a legal defense against the argument that it illegally bundled its Web browser with its operating system to crush rival Netscape. The bundling of IE with Windows 98 allowed Microsoft to establish market dominance and become the de facto standard Web browser. By demonstrating that Windows 98, with IE removed, was incapable of functioning as designed, Microsoft "proved" that IE was a "necessary" component of Windows 98. However, this claim is clearly ludicrous, and has not been completely remedied by the Proposed Final Settlement.

My principle objection is that the USDOJ appears, by way of the language of the Proposed Final Settlement and Competitive Impact Statement, to have accepted Microsoft's claim that IE "cannot" be removed from Windows. I simply refuse to believe that the company that integrated its Web browser with its operating system cannot un-integrate it.

It is my contention that Microsoft's future corporate strategy revolves around the development of a method of delivering digital content and services ("DCS") securely to a computer user, and that, as a business, it is aware of how profitable this will be. Part of this effort is the integration of Digital Rights Management ("DRM") and other schema (encryption, licensing, authentication, etc.) into daily use of the computer through the Windows Explorer shell, and therefore through IE. Any DRM scheme (et al.) proposed by Microsoft will therefore be very lucrative for Microsoft, and for Microsoft's partners, by requiring any user of Microsoft's software to pay a per-use Microsoft "tax" to access DCS via the internet, and by requiring any developer to license this technology from Microsoft.

It is also my contention that the integration of IE with Windows was purposefully undertaken by Microsoft to crush Netscape and establish market dominance before the internet had grown to the point that the technologies for the secure delivery of DCS were necessary, i.e., before there was a market for such technologies. I tip my hat to Microsoft's business acumen. However the internet has grown to the point that no one company can be allowed to stand between the public and the information it offers, freely, to all. With the vast majority of computer users using Microsoft operating systems, this guarantees that internet access is contingent on satisfying whatever conditions Microsoft chooses to impose.

It is my contention that DRM or other schema involved in the delivery of DCS over the internet cannot be proprietary, and that the seeming acceptance, on the part of the USDOJ, of the integration of IE with Windows has given Microsoft an unfair advantage by allowing Microsoft to utilize the leverage gained by establishing its web browser as the dominant web browser to secure future profits, which will allow Microsoft to unfairly extend its monopoly into new computer technologies.

The Proposed Final Judgment does nothing to remedy this, but instead allows Microsoft to profit from actions which would be prohibited under the terms of the Proposed Final Judgment. I propose that the Proposed Final Judgment "level the playing field" by requiring, for example, that language or provisions such as Section III.E of the Proposed Final Judgment be stricken in toto:

"Section III.E ... exempts from these licensing requirements certain very limited and specific portions or layers of Communications Protocols which would, if disclosed, compromise the system security provided by Microsoft anti-piracy, anti-virus, software licensing, digital rights management, encryption and authentication features."

It is my contention that the only relief for Microsoft's past abuse is to force Microsoft to openly and publicly disclose all features exempted by the Proposed Final Judgment, to allow no exceptions to the rule of public disclosure, and to require that this occur immediately, i.e., before the one year deadline for disclosure of Microsoft's application programming interfaces ("APIs"). This would allow the development of competing applications immediately. Companies which have unfairly suffered because of Microsoft's status as a monopoly will be able to offer competing applications much sooner than they would have under the proposed schedule. It would have the added benefit of allowing interested third parties to examine Microsoft's proposed DRM, licensing, authentication, et al. to ensure that security is not sacrificed for "features".

2. A. Microsoft's has repeatedly demonstrated that, as a corporation, it does not place a great emphasis on security. B. This has placed an unfair burden on American businesses and individual consumers to secure Microsoft software. C. Microsoft's corporate values are a direct result of the integration of Microsoft "operating systems" and "applications" development under one corporate umbrella. D. The ease with which Microsoft application developers utilize features exclusive to Microsoft operating systems contributes to a corporate climate which is organizationally incapable of responding to security vulnerabilities which exploit those features. E. The only remedy for this situation is to divide the corporation into two separate halves - one to develop the operating system and the other to develop applications to be run by the operating system - and to require that any APIs necessary to properly integrate an application with the operating system be disclosed to competitors in accordance with the provisions of the Proposed Final Judgment.

I am aware that Microsoft's founder, Bill Gates, recently made a pronouncement concerning computer and information security, in which he stated that security must become Microsoft's top priority. As for me, this is too little, too late. I believe the recent memorandum from Bill Gates is part of Microsoft's strategy to create a safe harbor and shelter large portions of its code base from the disclosure terms of the Proposed Final Judgment - if every API has something to do with "security", none of them are required to be disclosed. This must not be allowed to occur, and if the language of the Proposed Final Judgment is allowed to stand, Microsoft's status as a monopoly will not even be challenged.

The results of Microsoft's "lip service" to security have been widely publicized. Computer worms and viruses written to exploit known weaknesses in Microsoft software have, in the past year, cost American businesses that depend on that software billions of dollars, and been a terrible inconvenience for thousands of computer users who lost data, personal or professional, to malicious code. I have personally invested in anti-virus software and a firewall to prevent worms and viruses that exploit known weaknesses in Microsoft software from affecting me. This

may be Microsoft's idea of "driving software development" or the "upgrade cycle", but it is not mine.

The ubiquity of Microsoft software is, in large part, responsible for the cost of cleaning up after such outbreaks and patching vulnerabilities caused by "features" that would have been exposed by a thorough code audit, if security had ever been Microsoft's priority. For example, Outlook Express ("OE"), by default, previews a message it receives if the "preview pane" is turned on, and parses any executable script it encounters. This allows a received message, without any further interaction from the user, simply on the basis of being received by that user via OE, to execute malicious code on that user's computer. Who, at Microsoft, was responsible for making the decision to incorporate this "feature" into OE? Why was it not reviewed and why was it not decided that its inclusion would make OE too vulnerable to attack?

Microsoft, as a corporation, is not capable of developing a truly secure application. The current code base is simply too large for even forty thousand employees to accurately and completely review. It is therefore my contention that Microsoft should be broken into two (or more) separate companies, one to develop Microsoft operating systems, and one to develop applications for Microsoft operating systems. Under the disclosure terms of the Proposed Final Judgment and 1. above, any Final Judgment should require Microsoft to disclose the APIs necessary to properly integrate an application with the operating system in accordance with the provisions of the Proposed Final Judgment. Requiring Microsoft to disclose any APIs necessary for its applications developers to write applications that seamlessly integrate with Microsoft operating systems would guarantee that although Microsoft might gain market share from new APIs which take advantage of integration with the operating system, any competing application developer would be free to use those APIs to enhance their own software in a unique way. Though Microsoft might profit temporarily from the use of exclusive Microsoft APIs, it would not be able to retain a monopoly through obscurity; Microsoft would be forced to truly compete by developing applications which best serve the needs of their users.

3. A. Microsoft has undertaken the development of tools (J++, J#, C# and ".NET") which seek to supplant established programming languages or internet protocols (C++, Java, etc.), and which offer limited, or non-existent, functionality on computers not running Microsoft operating systems or IE. B. These tools directly subvert the open, non-proprietary standards which the internet was developed around. C. Allowing Microsoft to further dilute these standards will increase the cost America's consumers must pay to access DCS via the internet.

It is my contention that Microsoft has undertaken this action to further extend its illegal monopoly, and dominate future internet technologies. The Proposed Final Judgment does not completely remedy this. What has already been proposed, ensuring that Microsoft is no longer allowed to punish Original Equipment Manufacturers ("OEMs") who choose to include competing technologies in their hardware or software products, does limit Microsoft's monopoly somewhat. However, it does not completely address the issue because software developers will always be at Microsoft's mercy when developing applications for Microsoft platforms via the applications barrier to entry. This issue is also addressed, in part, by requiring the disclosure of Microsoft's APIs, which I have already commented on above.

I again assert that Microsoft should not profit from behavior that would have been illegal if the terms of the Proposed Final Judgment had been in force. By requiring the immediate disclosure of all APIs, DRM and other schema, immediately and without exception, competing applications may be developed using established programming languages or internet protocols which provide as much functionality as applications

developed using proprietary Microsoft programming languages or internet protocols. This would deny Microsoft the opportunity to further entrench itself as a DCS provider by excluding its rivals with proprietary technologies which only provide full functionality on computers running Microsoft's operating systems or IE, with which Microsoft's proprietary programming languages or internet protocols can be fully integrated.

The loss of revenue due to sales of J#, C# and .NET development tools, instruction manuals, books, peripherals, etc. will be a punishment that truly fits the crime. By trying to encompass and control access to the internet, Microsoft will ensure that future internet technologies offer truly universal access. This will benefit consumers by offering more choices, not less, and by keeping the internet free of the control of pervasive corporate interests which threaten it. DCS will remain inexpensive, in that consumers will not have to pay a hefty "tax" to Microsoft (or any of its partners) simply to access DCS via the internet. The internet was built with the tax dollars of America's consumers, and should be managed by the government in concert with the global community, corporations, and citizens the world over, on behalf of all humanity. Microsoft must not be allowed to control access to the internet, or relegate consumers to a "second-class internet" simply because they are not Microsoft customers.

This concludes my comments. Thank you for your consideration.

J. C. Allen